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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,416	04/13/2000	MICHEL REVEL	REVEL=15	5069

1444 7590 03/17/2006

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EXAMINER

KOLKER, DANIEL E

ART UNIT	PAPER NUMBER
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1649

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/462,416

Applicant(s)

REVEL ET AL.

Examiner

Daniel Kolker

Art Unit

1649

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 4 and 7.
Claim(s) rejected: 6, 9-11, 33 and 38.
Claim(s) withdrawn from consideration: 16-26 and 37.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


SHARON TURNER, PH.D.
PRIMARY EXAMINER

3-14-06

Continuation of 5. Applicant's reply has overcome the following rejection(s):

The communication has no claim amendments. The amendment to the specification has been entered. The arguments are sufficient to overcome the following rejections:

1. The rejection under 35 USC 112, 1st paragraph, for introducing new matter. The specification, p. 8 lines 3 - 6, specifically defines sIL-6R-deltaVal-IL-6 as being the sequence set forth in Figure 3. This sequence is clearly identified as SEQ ID NO:7 (see description of Figure 3, on p. 13) and contains the non-immunogenic linker Glu-Phe-Met of at positions 357-359. In the paragraph beginning at p. 17 line 12, the specification discloses that the soluble form of IL-6R is truncated at valine-356 and can be used to construct the chimeric polypeptide, wherein a linker peptide "of desired length to distance the sIL-6R and IL-6 moieties from each other" can be introduced. The specification discloses two embodiments of linker peptides, one being three amino acids long, the other being 13, neither of which prevents dimerization of gp130.

2. The rejection under 35 USC 112, second paragraph. Applicant's arguments are persuasive.

The arguments are not sufficient to overcome the following rejections:

1. The rejection under 35 USC 103. Applicant's arguments are not persuasive. While the specific choice of EFM as a tripeptide linker is not taught or suggested by the cited references, Weich teaches that 2-3 amino-acid linkers generically are suitable for use in chimeric proteins comprising interleukin molecules. As set forth on p. 5 of the office action mailed 10/14/05, the overlap of ranges between the prior art (2-3 amino acids) and the claimed linker length (3-4 amino acids, see claim 38) provides basis for the selection of a linker of this size generically. Furthermore the reference teaches that the size of the linker is not important, as linkers 2-3 amino acids long or 23 amino acids long are both functional. Fischer discloses the distance between the two protein moieties to be "in the order of 40 Angstroms" but nothing in Fischer teaches that linkers smaller than 13 amino acids (used by Fischer and by applicant) suggests that smaller linkers could not be used. In fact Fischer teaches that it is important to keep the overall size of the molecule small, so the finding that a 3-mer linker worked is not at all surprising given the teachings of both Fischer and Weich

Claims 4 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Continuation of 11. does NOT place the application in condition for allowance because: The arguments submitted are not sufficient to overcome the rejections under 35 USC 103. The rejection stands for the reasons made of record in the last office action .